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Sent: 3/25/2021 8:55:05 PM
To: AO OPA OMR CLIPS [AO_OPA_OMR_CLIPS@epa.gov]
Subject: Daily News Clips: Afternoon Edition 3/25/2021

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Congressional Democrats aim to reinstate rules on methane gas emissions from oil and gas works

Democrats want to require companies to monitor their pipelines for leaks of the potent greenhouse gas - and fix them fast

March 25, 2021

BY: [DINO GRANDONI](#)

https://www.washingtonpost.com/climate-environment/2021/03/25/climate-methane-regulation/?utm_source=rss&utm_medium=referral&utm_campaign=wp_climate-environment

Democrats on Capitol Hill are aiming to swiftly reinstate Obama-era rules designed to rein in the emission of methane from the nation's oil and gas industry.

Senate Majority Leader Charles E. Schumer (D-N.Y.) announced Thursday he is backing an effort to restore Environmental Protection Agency requirements meant to fix leaks of the potent greenhouse gas from new wells, pipelines and other equipment that were watered down by the Trump administration, with a floor vote planned for April. On the other side of the Capitol, House Democrats led by Rep. Diana DeGette (D-Colo.) are set to introduce a companion resolution this week.

"Time is of the essence in this fight to combat the climate crisis," DeGette said. "If we're serious about wanting to stave off the worst effects of climate change before it's too late, then we absolutely have to take steps now to reduce the amount of methane that's being released into our atmosphere."

Congressional Democrats want to take advantage of the Congressional Review Act, which allows Congress to overturn what it sees as objectionable rules completed in the waning days of the outgoing administration without having to go through a cumbersome rulemaking process.

This would be the first time Congress has turned to the Congressional Review Act to undo a rule under a Democratic president. The Trump administration used the 1996 law, the brainchild of former GOP House speaker Newt Gingrich, to reverse more than a dozen rules issued by the Obama administration on a wide variety of issues, including water pollution, worker safety and online privacy.

The effort is a part of a broader, government-wide plan forming under President Biden to tackle global warming and meet his goal of eliminating the country's contributions to climate change by the middle of the century.

The United States is planning to unveil next month a new target for cutting climate-warming emissions and prod other nations to do the same under the Paris climate accord, which is designed to keep the Earth from warming by an average of more than 1.5 degrees Celsius. The planet is already 1 degree Celsius warmer than preindustrial levels, and a Washington Post analysis found roughly one-tenth of the globe has already warmed by more than 2 degrees Celsius. “When it comes to steps we can take to address climate change, limiting methane emissions is the low-hanging fruit,” said Sen. Angus King (I-Maine), who is introducing the resolution with Sen. Martin Heinrich (D-N.M.) in the Senate.

But the effort to compel the oil and gas industry to curb methane emissions comes at a time when the industry is already feeling squeezed by the Biden administration’s efforts to pause the sale of drilling rights and halt the construction of the Keystone XL pipeline.

Even so, the American Petroleum Institute, the largest oil and gas lobbying group in Washington, says it wants to work with Congress and the Biden administration to shape any regulations going forward, noting that the more methane is captured, the more gas it can sell.

“We have an opportunity to build on the progress the industry has made in driving down methane emissions through technological advancement and cost-effective government policies,” said Frank Macchiarola, the group’s senior vice president of policy, economics and regulatory affairs.

If passed, the resolution would restore requirements on companies to check for methane leaks from pipelines, storage tanks and other equipment installed after 2015 every six months — and plug them within 30 days once detected.

Environmental advocates say preventing such seepage is crucial for the United States to meet its climate goals. Over a 20-year period, the gas has 84 times the global warming power of carbon dioxide.

The energy sector is the country’s largest source of methane emissions. In 2018, U.S. oil and gas companies emitted enough methane into the atmosphere to equal of warming effect of 175 million metric tons of carbon dioxide, according to the EPA.

David Doniger, senior strategic director of the climate and clean energy program at the Natural Resources Defense Council, called the Trump administration’s rollback “a free pass for America’s oil and gas companies to keep leaking.”

“Congress could quickly erase an appalling rollback,” he added. “This is big.”

The move by congressional Democrats would also open the door to the EPA writing even more expansive rules targeting errant methane emissions from older equipment built before 2015, which tends to be leakier. On his first day in office, Biden ordered the EPA to write comprehensive standards for curbing methane leaks from existing oil and gas infrastructure by September.

When the Trump administration whittled down some of those surveillance responsibilities last August, officials argued the rules it rolled back were redundant, boasting the action would save the industry “millions of dollars in compliance costs each year.”

Biden Administration Shows Early Support For Industry Ship GHG Plan

March 25, 2021

<https://insideepa.com/weekly-focus/biden-administration-shows-early-support-industry-ship-ghg-plan>

The Biden administration is offering early support for a revised plan by a U.S.-based shipping sector body for an industry-funded research organization to develop new low-carbon options for fueling ships, a category of mobile sources for which EPA has not yet set greenhouse gas standards compared to other regulated sources such as cars and aircraft.

Under the plan developed by the World Shipping Council (WSC), which represents much of the world container shipping sector, shipping companies would jointly fund the \$5 billion venture to develop alternatives to fossil fuel propulsion, as the sector searches for ways to dramatically cut its GHG emissions.

The fund would be overseen by the U.N. International Maritime Organization (IMO), of which the United States is a member, and would require approval by IMO's maritime environmental protection committee (MEPC) and ultimately the IMO's 174 member states for a modification of the International Convention for the Prevention of Pollution from Ships (MARPOL).

An industry source says that in initial talks, the Biden administration has appeared "fully supportive" of the plan. IMO talks are conducted primarily by the State Department, although mobile source emissions reductions also fall within EPA's jurisdiction.

EPA has, for example, introduced domestic regulations to fulfill U.S. commitments to the IMO to use ultra-low sulfur fuels within an emissions control area (ECA) close to the North American coast, and to limit air emissions from U.S.-based shipping. The agency has also promoted voluntary programs to cut GHGs in U.S. ports, and funded measures to achieve such reductions.

The agency has listed as a priority a review of Trump-era Clean Air Act rules setting first-time GHG standards for aircraft, after strong criticism from environmentalists that the Trump standards merely preserve the status quo. However, the Biden administration has so far not announced major new climate initiatives for ships.

The United States and other members of the IMO have agreed to halve the global shipping industry's GHG emissions by 2050, relative to 2008 levels, but achieving this will require entirely new fuels, going beyond the energy efficiency and design improvements that IMO countries have so far agreed, sources say.

The WSC proposal would establish an International Maritime Research and Development Board (IMRB) to oversee the new fund that would pay research institutions and technology developers -- but not shipping companies -- to develop innovative new technologies. The new version is proposed at IMO by Georgia, Greece, Japan, Liberia, Malta, Nigeria, Palau, Singapore, Switzerland and a number of shipping organizations.

Research Proposal

Unlike the original proposal, the modified research plan would dedicate a portion of the funding expressly for small island developing states (SIDS) and least developed countries (LDCs) to assist their efforts to curb global warming. It further specifies that the new fund should be governed within IMO, not a separate non-government organization.

The leading fuel options to reduce GHGs from ocean-going ships are ammonia and hydrogen, which present a series of challenges, but other options include biofuels and liquefied natural gas (LNG) as a "bridge" to zero-carbon fuels. Batteries, and electric power supplied from shore while ships are in port, might also play a much larger role in the future. Smaller vessels such as ferries traveling shorter distances may also widely adopt electric propulsion.

The IMO Feb. 9 and 10 hosted an international symposium on fuel options, at which international shipping companies and trade groups debated different technologies. While ammonia and hydrogen featured as possible fuels for the long-term future, several speakers saw LNG as a medium-term option to reduce emissions, or as part of a mix with other technologies such as batteries to produce hybrid solutions.

Hydrogen, which is explosive, and ammonia, which is poisonous, currently lack the required fuel distribution infrastructure, safety equipment and industry safety protocols for widespread use, the shipping sector source says. Hydrogen may be more promising in the long run than ammonia, if safety concerns can be mitigated, the source says.

Hydrogen and ammonia offer better low- or zero-carbon fuel options for the future than LNG, which continues to have a significant GHG footprint, the source adds.

Also, several presenters at the IMO symposium offered presentations on the benefits of biofuels, although the shipping industry source says these are also not credible as a long-term option. "There are few biofuels that even come close to carbon neutrality," says the source, adding that the biofuels with the greatest GHG reduction potential also "have inherently limited supply." -- *Stuart Parker* (sparker@ipwnews.com)

Coalition Asks Biden Administration to Reduce Truck Emissions by Fall 2022

March 25, 2021

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A wide-ranging coalition of business, science and environmental groups is calling on the Biden administration to within the next 18 months set “multi-pollutant climate and clean air standards” that will eliminate particulate matter, oxides of nitrogen and greenhouse gas emissions from new freight trucks and buses.

“We urge your administration to adopt pollution standards by fall of 2022, eliminate the smog-forming nitrogen oxides, deadly particles and climate pollution from freight trucks and buses that are based upon, and fully mobilize, the availability of zero-emitting solutions,” said a letter to President Joe Biden, dated March 23.

The Natural Resources Defense Council, Environmental Defense Fund, Union of Concerned Scientists, Interfaith Power & Light, League of Conservation Voters, American Council for an Energy Efficient Economy and the California Business Alliance for a Clean Economy were among the 17 groups signing onto the letter.

Coalition Clean Air Letter by Transport Topics

Copies of the letter also were sent to a range of top Environmental Protection Agency officials, including recently confirmed EPA Administrator Michael Regan.

Truck pollution standards should eliminate pollution from all new freight trucks and buses no later than 2040, and from freight trucks and buses used in urban and community areas no later than 2035, the letter said.

A recent analysis by the Environmental Defense Fund showed that pollution standards that achieve the groups’ goals would prevent 57,000 premature deaths and eliminate more than 4.7 billion metric tons of climate pollution by 2050, according to the letter.

“Pollution from freight trucks and buses is concentrated in low-income communities and communities of color,” the letter said. It said “protective standards are essential in order to address that disproportionate impact.”

“What we’re trying to get across is that we want to ensure that the Biden administration gets a multi-pollution standard that will get us on a trajectory of electrifying trucks,” Katherine Garcia, deputy director for national policy for the Sierra Club, told Transport Topics. “We’re seeing a number of states that are working to adopt an advanced clean trucks rule. I think that is really sending a signal to the Biden administration that it needs to act on cleaning up trucks.”

Added Glen Kedzie, energy and environmental affairs counsel for American Trucking Associations: “The trucking industry is extremely proud of the historical progress we have made over the past two decades in reducing our nitrogen oxide and particulate matter emission footprints to near-zero levels on all new trucks entering the marketplace. In addition, we worked closely with both the EPA and The National Highway Traffic Safety Administration in finalizing first-ever fuel consumption and greenhouse gas standards for new trucks, engines and trailers which took effect beginning in 2014 with progressive and stringent implementation milestones through 2027.

“Trucking considers environmental stewardship as one of our top priorities,” Kedzie continued. “As such, ATA will continue to work with the federal government and states to ensure that the next generation of clean technology vehicles on the horizon will be commercially available for all diversified trucking applications, economically affordable, thoroughly tested, and not impair the movement of our nation’s goods.”

Peter Zalzal, senior counsel for the Environmental Defense Fund, told TT, “We see a real opportunity with the increasing availability of zero-emitting solutions in the medium- and heavy-duty space right now. And we see even more on the horizon that are capable of reducing a full suite of pollution from medium- and heavy-duty vehicles. We think standards should fully leverage that.”

Biden’s Environmental Agenda in Bull’s-Eye for Red State AGs

March 25, 2021

BY: ELLEN M. GILMER

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Environmental policy has emerged as a primary target for conservative attorneys general looking to keep the Biden agenda in check, the latest battleground in a long-running conflict over the scope of federal regulation.

Republican-led states have filed a half-dozen lawsuits against the administration so far, with the three biggest actions focused on the White House's energy and climate policies.

Legal observers say the new administration isn't likely to repeat the types of regulatory missteps that earned early legal rebukes for Trump-era policies. But Biden's ambitious policy goals on climate change and environmental justice could nonetheless provide ample legal fodder for challenges.

The latest of those cases arose Wednesday as Louisiana and 12 other states sued the Biden administration over a federal oil and gas leasing pause, while Wyoming filed its own case. Earlier in the month, Texas led a 21-state coalition in a challenge to President Joe Biden's decision to block the Keystone XL pipeline, and Missouri and 11 others sued over the administration's reworked metric for climate impacts. Those are the first multistate coalition lawsuits filed against Biden.

"This is a strong indicator that we will see aggressive litigation from Republican AGs challenging the Biden administration's climate and air regulations," said Hana Vizcarra, a staff attorney at Harvard Law School's Environmental and Energy Law Program.

Republican attorneys general have promised as much, saying energy and environmental issues are top priorities as they challenge what they see as executive overreach from the Biden team in a number of areas, including immigration and pandemic relief.

Georgia Attorney General Chris Carr, chairman of the Republican Attorneys General Association, told Bloomberg Law he's prepared to push back on the administration "using environmental causes as political symbolism and not recognizing the real-world impacts that they have."

Biden's day-one decision to scrap a key permit for Keystone XL is a prime example, he said. Georgia signed on to last week's pipeline lawsuit saying Biden exceeded his authority.

'Doesn't Bode Well'

The early focus from Republican attorneys general on environmental policy tracks with state officials' longtime involvement in those issues, said Marquette University professor Paul Nolette, who studies state AGs.

The Clean Air Act and other anti-pollution statutes have interstate "conflict that was built into the system," he said, fueling multistate lawsuits going back to the Reagan administration.

Democratic attorneys general were especially active on pollution and energy issues during the Trump administration. Out of a record 157 multistate lawsuits challenging federal policies, about half focused on environmental issues and resulted in repeated victories for states, according to Nolette's data.

States fighting the Biden administration might not see the same level of success, as many of the early wins against Trump were attributed to rushed agency efforts to sideline Obama-era policies.

"It's not clear right now that the Biden administration is going to cut corners in the same way," said Bethany Davis Noll, executive director of New York University's State Energy & Environmental Impact Center. The center has received funding from Bloomberg Philanthropies, the charitable organization founded by Michael Bloomberg. Bloomberg Law is operated by entities controlled by Michael Bloomberg.

Republican state officials aren't necessarily looking to match their Democratic counterparts on the volume of cases filed, Carr said, but "we're not going to hesitate when something is legally or constitutionally wrong."

Montana Attorney General Austin Knudsen, a Republican who took office in January, said Biden's early flurry of executive actions on Keystone XL and climate change suggest Montana will have a busy few years litigating federal natural resources policies—a critical issue for a state rich in coal, oil, and gas.

"When he does stuff like this on day one, it doesn't bode well," Knudsen said in an interview.

Future Battles

But state AGs' most significant legal work against the new administration likely will come later in Biden's presidency, as the Environmental Protection Agency, Interior Department, and other agencies revamp Trump-era regulations or issue new ones.

Top targets include the EPA's future efforts to reduce greenhouse gas emissions from the power and transportation sectors, as well as the agency's approach to Clean Water Act jurisdiction.

"I expect we'll see heated battles by the red-state AGs to most of the environmental initiatives that the Biden administration intends to undertake," said Crowell & Moring LLP attorney Thomas A. Lorenzen, a former Justice Department lawyer.

Republican attorneys general have a history of collaboration to guide their work, said Hunton Andrews Kurth lawyer Matthew Z. Leopold, a former Florida Department of Environmental Protection lawyer who often partnered with the state AG's office in that role.

During the Obama years, Republican AGs launched coordinated attacks that blocked the Bureau of Land Management's hydraulic fracturing rule, stalled the EPA's water jurisdiction interpretation in some states, and forced the EPA to study the costs of its mercury and air toxics standards for power plants. Their biggest victory came in 2016, when the U.S. Supreme Court froze the EPA's Clean Power Plan after more than two dozen states challenged it.

"It was really important to make sure that everyone spoke with one voice," said Troutman Pepper lawyer Misha Tseytlin, who was Wisconsin's solicitor general from 2015 to 2018 and helped challenge the EPA climate rule.

An array of factors, including legal strategy and judges, will affect Republican AGs' success against the Biden agenda. But what may matter most is the substance of the new administration's actions, Case Western Reserve University law professor Jonathan H. Adler said.

Federal officials will have to balance their desire for bold environmental action against the reality that many courts are skeptical of any novel use of an agency's authority, he said.

"A lot really depends," Adler said, "on how much the Biden administration thinks about and accounts for the legal vulnerabilities of different sorts of strategies."

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District court finalizes contested EPA air deal with Indiana utility

March 25, 2021

<https://insideepa.com/daily-feed/district-court-finalizes-contested-epa-air-deal-indiana-utility>

A federal district court in Indiana has given final approval to a Trump-era consent decree between EPA and an Indiana electric utility that provoked opposition from environmentalists because it allows the company to avoid installing near-term emissions controls by closing electric generating units (EGUs) already scheduled to retire.

The U.S. District Court for the Southern District of Indiana entered the decree March 23 in *United States of America, et al., v. Indianapolis Power & Light Company (IPL)*, finalizing [an agreement proposed Aug. 31](#) to resolve a longstanding enforcement action by EPA and Indiana state regulators over alleged Clean Air Act infractions dating from 2008, 2015 and 2016 at the firm's Petersburg plant in Pike County, IN.

The case involves a variety of alleged violations of Clean Air Act new source performance standards, Title V and new source review air permit terms, as well as the Indiana state implementation plan for complying with the air law.

The consent decree aims to significantly reduce air pollutants including sulfur dioxide, nitrogen oxides, particulate matter and sulfuric acid mist.

It requires IPL to install selective non-catalytic reduction (SNCR) on one of the plant's EGUs, upgrade its sulfuric acid mitigation system and optimize use of existing controls. The decree also requires IPL to pay a civil penalty of \$1.525 million, of which \$925,000 will go to the United States and \$600,000 to Indiana.

But the decree also gives IPL the option to avoid installing the expensive SNCR controls if it closes two generating units at the plant by July 2023.

This provision spurred one environmentalist to label the deal "just for show," because it does not require sufficiently stringent emissions cuts, saying the decree looks like a "sweetheart" deal.

"For example, it doesn't require retirement of any units. It requires SNCR, rather than [selective catalytic reduction, (SCR)], with SNCR being much cheaper but much less effective, for Petersburg Unit 4. But even then, it lets them off the hook for that if Petersburg 1 and 2 are retired," the source says, noting that those units are already slated for retirement and so the decree merely codifies plans the utility already had in place.

EPA Publishes Advance Notice of Proposed Rulemaking in Preparation for Crafting PFAS Effluent Limitations Guidelines

March 25, 2021

<https://www.jdsupra.com/legalnews/epa-publishes-advance-notice-of-4033648/>

On March 17, the U.S. Environmental Protection Agency (EPA) published an Advance Notice of Proposed Rulemaking (ANPRM) that puts forth 28 questions directed at manufacturers and formulators of per- and polyfluoroalkyl substances (PFAS). The agency intends to use the ANPRM and comments it receives to initiate formal rulemaking to establish effluent limitations guidelines (ELGs) for facilities that manufacture or blend PFAS with other chemicals or products, likely at least initially as an amendment to the existing guidelines governing the "Organic Chemicals, Plastics and Synthetic Fibers" (OCPSF) industrial sector.

ELGs are sector-specific wastewater discharge limits based on the degree of pollutant reduction that can be achieved through demonstrated treatment technologies and controls taking into account feasibility, cost, and other factors. They can only be established through extensive notice-and-comment rulemaking and require significant technical and economic administrative record support. EPA is required to consider updates to existing ELGs or identify new industrial discharge categories potentially in need of control as part of its ongoing review obligations under the Clean Water Act. ELGs are incorporated into National Pollutant Discharge Elimination System (NPDES) permits for the covered sources. The OCPSF sector currently includes, among other industries, manufacturers of PFAS. Note, however, that formulators of PFAS are not necessarily included within the existing OCPSF sector. Formulators are facilities that take raw PFAS feedstock and integrate the chemicals into new commercial products or intermediate products that are subsequently used in other consumer products. As a result, the data EPA gathers under this ANPRM may be used to revise other ELGs or create a new ELG category or subcategory. It is also likely that EPA will continue to evaluate the need for PFAS ELGs for other significant end-user sectors, such as commercial airports, textile and carpet manufactures, pulp and paper facilities, and other manufacturing sectors.

The ANPRM follows EPA's January 11 release of its latest "ELG Plan," where it announced it would be seeking new data to draft a PFAS ELG rule. Addressing PFAS in water has been a priority at EPA over the past several years, but after undertaking a multi-industry study on PFAS use, treatment, and discharges, the agency appears to be acknowledging that it currently lacks the data it needs to immediately move into a formal rulemaking process. The ANPRM should fill some of the information gaps EPA currently has on industrial sources of PFAS discharges, as well as the types and concentrations of the PFAS compounds contained in the discharges. Additionally, EPA may gain additional information regarding the number and locations of industrial sites that use PFAS, including the identities of known PFAS formulators and manufacturers. Thus far, the ANPRM has preliminarily identified six PFAS manufacturing sites and 10 possible PFAS

formulators, but EPA expects these numbers to change. EPA may also seek to use other information gathering authorities to supplement the information it receives through the ANPRM process.

EPA also seeks information related to how PFAS manufacturers and formulators treat, manage, and dispose of PFAS-contaminated wastewater. To that end, EPA is requesting that wastewater monitoring data be accompanied by information on the analytical methods used by the manufacturers and formulators, in addition to information regarding any existing treatment systems currently deployed to limit discharges to surface waters or wastewater treatment plants. This information helps EPA determine whether it needs to move forward with a formal ELG process for particular source categories, and whether existing controls can achieve meaningful pollutant reductions. Industry frequently engages with EPA at this stage to ensure that EPA is acting on accurate information and is not simply regulating based on the perception of need. Importantly, EPA is also requesting data on any PFAS compounds detected in wastewater — not just the PFAS compounds that may already be monitored through individual NPDES permit requirements.

While this advance notice serves as an acknowledgement that EPA may currently lack the data it needs to set sector-specific standards, it does serve as a harbinger of regulations to come under the new administration. And while EPA is only in the advance stages of rulemaking, EPA will continue to work with its regions and states on strategies for monitoring and then regulating individual discharges of PFAS through the NPDES permit program. That this notice was a continuation of a Trump administration initiative under its PFAS Action Plan also speaks volumes about the level of bipartisan support targeted PFAS regulation currently has in the executive branch, on the Hill, and at the state and local community level. That support is expected to grow over the next few years.

EPA Report Identifies Hot Spots for Hazardous Spills Into Drinking Water Sources

Agency finds “significant risk” nationally for toxic emergencies.

March 25, 2021

BY: BRETT WALTON

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<https://www.circleofblue.org/2021/world/epa-report-identifies-hot-spots-for-hazardous-spills-into-drinking-water-sources/>

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The morning of January 9, 2014, regulators at the West Virginia Department of Environmental Quality received complaints of strange odors akin to licorice coming from the Freedom Industries chemical storage facility, in Charleston.

When inspectors arrived on site, they found two holes at the bottom of tank 396. The holes, no wider than a nickel, allowed about 11,000 gallons of crude MCHM, a coal washing chemical, to flow into the adjacent Elk River.

Less than two miles downstream of the spill was the intake for West Virginia American Water, the operator of Charleston’s drinking water system. Owing to confusion about the nature of the chemical, crude MCHM slipped into the utility’s distribution network, resulting in 300,000 residents in nine counties being told not to use their tap water. The do-not-use order, for some residents, lasted nine days.

The Freedom Industries spill is one of many incidents detailed in a new U.S. Environmental Protection Agency report that is the most comprehensive assessment to date of the number, location, and characteristics of chemical and toxic spills into U.S. drinking water sources.

Using a combination of federal data sets covering the years between 2010 and 2019, the assessment found 3,931 incidents of toxic spills into groundwater, rivers, or lakes used for drinking water. The spills occurred in the vicinity of 15 percent of the country’s drinking water intakes that draw from surface water but in less than 1 percent of groundwater wells.

“The findings from this study demonstrate there is a significant risk of releases into sources of drinking water at a national scale,” according to the report. “However, the risk to a community water system will depend on their unique circumstances.”

The EPA did not make the report author available for an interview but the agency noted in a statement that the risk of contamination varies across individual water systems.

Outside experts said that the report is an important contribution to understanding contamination risks to drinking water.

“I don’t think there’s ever been an aggregation of the data in this manner before,” Kevin Morley of the American Water Works Association, an industry group, told Circle of Blue.

Spills occurred in every state, but certain regions exhibited more failures. The largest number of incidents were concentrated around transportation routes, mining and drilling sites, and industrial hubs. Those areas include the Ohio River Valley, Mississippi Delta, Los Angeles area, oil and gas belts of Oklahoma and Texas, and Interstate 95 corridor in the Northeast.

States with the most incidents were Texas (303), California (244), Oklahoma (236), Louisiana (205), and Pennsylvania (169). Osage County, Oklahoma, an oil and gas hub, alone accounted for 117 incidents.

More than half the incidents were small, meaning spills of less than 1,000 gallons. Large spills like the release of millions of gallons of coal waste into the Dan River in North Carolina in 2014 were infrequent.

Equipment failures (27 percent) were the leading cause of spills, and private industry was most often the responsible party.

Out of the 840 hazardous substances that were documented in the decade of spills, more than half the incidents were related to discharges of refined oil.

These details add up to a clearer picture of risks to drinking water, said Alan Roberson, the executive director of the Association of State Drinking Water Administrators.

“The idea is that utilities will be better informed about what’s upstream,” Roberson told Circle of Blue.

Assessing Risks

Congress, in 2018, passed the America’s Water Infrastructure Act. Several provisions in the act were in response to the Freedom Industries spill and were intended to provide community water systems with more information about threats to drinking water, like the tanks of crude MCHM sitting upstream from Charleston.

West Virginia American Water knew that the chemical storage tanks were a risk. But the utility did not know what chemicals they stored, according to the U.S. Chemical Safety and Hazard Investigation Board.

The America’s Water Infrastructure Act was designed to lift that ignorance. The act allows community water systems to access hazardous chemical data collected under federal law that previously had been available mostly to fire departments and emergency responders. The act also requires that water systems receive prompt notice of a spill.

The report recommends that utilities use the powers granted by the 2018 act to catalog facilities that could prompt an emergency and identify the chemicals they use. Then utilities should make contact with facility owners to establish lines of communication for direct contact during an emergency. Utilities should identify labs that can test for the chemicals in question. They should plan how to protect an intake and whether their treatment process can remove hazardous materials that might be spilled.

“It’s all about the time,” Morley explained. “The more time, the more options I have.” Instead of scrambling to learn the characteristics of a spilled substance and reacting on the spot, utilities can write those details into emergency response plans that the 2018 act also requires.

The EPA said it briefed national water associations on the report and shared its findings to utilities via webinars and conferences.

The report examined spills that were reported to the National Response Center, a clearinghouse, between 2010 and 2019. The report includes spills that occurred in waters used as a drinking water source for community water systems serving more than 1,000 customers. For systems using surface water, the “zone of concern” extended 50 miles upstream and a quarter mile downstream of a drinking water intake. For groundwater systems, the zone was a half-mile radius around a well. Spills of less than 100 gallons were excluded from the analysis, except in the case of arsenic, cyanide, pesticides, and other highly toxic materials.

The report is useful in other ways, Morley said. It demonstrates that this sort of risk analysis — combining the locations of chemical facilities and drinking water intakes and wells — is possible for other laws like the Toxic Substances Control Act and Clean Water Act that require similar spatial assessments.

“This shows that EPA does have the capability,” Morley said.

Environmentalists Eye ‘Damning’ Records To Support TSCA Reversals

March 25, 2021

<https://insideepa.com/daily-news/environmentalists-eye-damning-records-support-tsca-reversals>

Environmentalists say newly released emails between Trump EPA toxics officials and industry figures show a “damning” level of coordination between the agency and regulated entities, which they hope will in turn help convince the Biden administration to undo its predecessor’s policies.

In a recent interview with *Inside TSCA*, environmental attorney and former EPA official Bob Sussman said the correspondence, which deals with several aspects of the Toxic Substances Control Act (TSCA) new chemicals program including model language for consent orders, individual compliance actions and possible rulemaking that was a subject of internal debate at the time, is “pretty revealing, and unfortunately pretty damning.”

And Anita Desikan, a research analyst for the Union of Concerned Scientists (UCS), said her group was “so shocked” by the details revealed in the unearthed emails.

“Sadly, it just seems to correspond to the many things that we’ve been seeing with other issues involving TSCA” during the Trump administration, she said.

The emails, which were first publicized by Environmental Defense Fund (EDF) senior scientist Richard Denison in [a March 11 blog post](#), show EPA officials in ongoing contact with industry attorneys and trade associations, as they crafted individual consent orders for new chemical uses, developed model language for such orders, and considered whether to overhaul the program’s framework regulations.

In general, Sussman said, the documents show a lack of transparency under the Trump EPA that further calls into question several Trump-era decisions environmentalists have already urged the Biden administration to rescind or re-evaluate.

Sussman said one set of documents in particular caught his eye -- emails between EPA and industry players that showed the agency had solicited comments about changes to model language for TSCA Section 5(e) pre-manufacture notice (PMN) consent orders prior to any public announcement that changes were even possible.

“The public never knew that EPA was redrafting the order until it was done and posted on the website,” Sussman said. He continued that at the time he and other environmentalists had written a letter to EPA asking why the agency did not solicit their input, to which he says officials replied that the changes were very minor and not substantive.

“But then it turns out that industry lawyers and trade associations were submitting pages and pages of comments and suggestions,” Sussman said. “So how minor were they, and was EPA really being honest when they said ‘don’t worry, these changes are minor’? Because at that point in time, they knew they had very extensive comments from industry, which indicated that the changes were pretty substantive and important to industry.”

He concluded, “I think the changes that were made to the standard EPA consent order for new chemicals should be reconsidered, both because of the lack of transparency and because they weaken the PMN program. I believe we called for these steps when it came to light that EPA weakened the consent order without any public notice and comment.”

“Hopefully this will be done as part of the Biden EPA’s reexamination of how the agency is implementing the new chemical review reforms in the 2016 TSCA amendments.”

Environmental groups are pushing the agency to revisit several major TSCA actions it took during the Trump administration, including evaluations of existing chemicals and its approaches to handling PMNs and other elements of the new-chemicals program.

'Far Beyond The Normal Processes Of Government'

Desikan said that the "details indicate" a "pattern of continuous solicitation of feedback," followed by "incorporation of everything industry seems to be saying," which she compared to tactics used by the tobacco industry when it sought to counter the once-controversial studies of whether smoking causes lung cancer.

The Trump EPA "adhered to industry's playbook almost to the point of corporate capture," she added, "to the point where it goes far beyond the normal processes of government and takes away the ability of government to protect our health and safety."

Desikan said, "The way rulemaking is supposed to work at the EPA is there is a point where you do solicit public opinion. You have public comment periods, you have public hearings, and industry and academics and community members and all other members of the public can provide that needed input at that stage. So it's fine if industry does it at that stage -- it's actually a very good step there."

However, Desikan said that the Trump EPA seemed to cherry-pick which stakeholders it sought out for early input, which "takes away from the normal processes of how public health regulations are supposed to work."

"This is a point of giving special interest to groups that we have seen for years and years and years try to undermine public health regulations, health and safety measures, for things that basically come down to profit," she said.

Sussman agreed that what he saw in Denison's post was "pretty extreme," and told *Inside TSCA* that though the agency was "never perfect" in the years he spent there, the newly published emails were a significant departure from the transparency policies he expected.

"All they needed to do here was issue a *Federal Register* notice saying 'we're thinking of changing our 5(e) consent order, and we would appreciate getting comments from interested stakeholders,'" Sussman said. "That's all they had to do." -- *Diana DiGangi* (ddigangi@iwpnews.com)

Tank full of anhydrous ammonia pulled from Missouri River

March 25, 2021

<https://apnews.com/article/environment-missouri-tigers-mens-basketball-jefferson-city-missouri-river-721526bf5c1c06406af681c06d5c8c19>

CLAYSVILLE, Mo. (AP) — A 1,500-gallon tank full of anhydrous ammonia was pulled from the Missouri River as it floated downstream near Jefferson City, the Environmental Protection Agency said.

Observers reported the tank and its wheeled chassis floating on the river near Claysville last Friday, when the river was at flood stage, the EPA said in a news release Thursday.

Because anhydrous ammonia is a toxic and potentially deadly chemical, the Missouri Department of Natural Resources called in the EPA. The Missouri State Highway Patrol and Jefferson City fire department secured the tank Friday and determined it wasn't leaking.

Federal, state, Jefferson City agencies and businesses, along with the Missouri Farmers Association, worked together to corral the tank and remove it from the river on Saturday, when the water level was safer, the EPA said.

The MFA is storing the tank while authorities search for its owner.

EPA Extends Coronavirus Enforcement Against On-Line Sales Of Unregistered Disinfectants

March 25, 2021

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<https://www.mondaq.com/unitedstates/environmental-law/1050900/epa-extends-coronavirus-enforcement-against-on-line-sales-of-unregistered-disinfectants>

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Earlier this week, EPA issued another "stop sale" order to Amazon directing the company to take steps to prevent the continued sale "of potentially dangerous or ineffective unregistered pesticides and pesticide devices making illegal and misleading claims, including multiple products that claimed to protect against viruses." The February 9th order adds 70 products to the 30 products identified in a prior June 2020 order issued to Amazon (a similar order also was issued to eBay last spring).

"Unregistered pesticides in the e-commerce marketplace pose a significant and immediate health risk to consumers, children, pets, and others exposed to the products," – Ed Kowalski, Director of the EPA Region 10 Enforcement Compliance Assurance Division

The new order extends the agency's aggressive enforcement actions taken in response to the pandemic, and builds on EPA's ongoing efforts, in conjunction with U.S. Customs and Border Protection, to prevent the import and sale of illegal disinfectant products. Over the last year, EPA also has engaged with Amazon and other e-commerce companies in discussions about policing the third-party sale of illegal disinfectants and other pesticide products on their platforms. In fact, EPA's focus on on-line sales of pesticide products extends well before the pandemic, and the recent order to Amazon is the third pesticide-related "stop sale" order issued to the company in the last three years. Those efforts are among the agency's highest enforcement priorities in light of the continued spread of the SARS-CoV-2 strain of the *coronavirus*.

Further information, including an agency press release and copies of the Amazon "stop sale" orders, are available on EPA's website.

EPA decision will determine DOD's PFAS disposal costs

March 25, 2021

<https://insideepa.com/daily-feed/epa-decision-will-determine-dod-s-pfas-disposal-costs>

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The Defense Department (DOD) says it is awaiting EPA's final decision on which disposal and treatment methods are acceptable for per- and polyfluoroalkyl substances (PFAS) before it will know its funding needs for cleanups across its bases, although DOD is estimating the cost range will be \$2 billion to \$3 billion.

Rep. Tony Gonzales (R-TX), during a March 24 House appropriations military construction subcommittee hearing on PFAS remediation and impacts, noted that DOD official Paul Cramer had called for a nationwide solution for PFAS disposal and treatment and asked how the subcommittee might aid that effort through the appropriations process.

Cramer, DOD acting assistant secretary for sustainment, said, "I believe the next action is on EPA." He added that EPA is currently reviewing numerous comments it received on its interim guidance on PFAS disposal and plans to issue a final document. Potential acceptable disposal methods "range from no incineration to some incineration," he said, referring to a method that has been heavily used by DOD to dispose of its stockpiles of aqueous film forming foam (AFFF) containing PFAS, but has drawn significant opposition from environmentalists.

Until "we understand what the approved disposal methods are, we really can't put a ballpark number on or advise the committee on our next steps," he said. Earlier, he said as to the long-term costs of PFAS cleanup, DOD is estimating the figure to be in the ballpark of \$2 billion to \$3 billion.

DOD faces likely significant cleanup costs as hundreds of its facilities may be contaminated with PFAS after the military for decades used AFFF containing PFAS to both train and fight fuel-based fires.

During the hearing, the subcommittee probed DOD's progress in addressing PFAS, with Subcommittee Chairwoman Debbie Wasserman Schultz (D-FL) questioning why DOD and the Department of Veterans Affairs are not doing more on PFAS, particularly in researching its effects. The military construction subcommittee last year appropriated an additional \$100 million for PFAS identification, mitigation and cleanup at closed bases, Wasserman Schultz noted.

DOD officials appeared to maintain the same position taken during the Trump administration on state cleanup levels, saying that it would commit to following a limited set of state PFAS levels. Cramer pledged DOD to following "properly promulgated state drinking water standards" for situations where the military is producing the water by permit. He said if there is a conflict between EPA's non-enforceable lifetime health advisory of 70 parts per trillion for the two most studied PFAS and enforceable state drinking water standards and DOD is the permit holder, it will meet the state standard, known as a maximum contaminant level (MCL). Absent that, DOD will meet EPA's advisory level, he added.

But, during a second panel, Jamie DeWitt, an associate professor in the toxicology department at East Carolina University, testified that EPA's advisory level, set in 2016, is outdated. States have promulgated more stringent levels in recent years. She said while she is "heartened to hear" DOD will clean up to state drinking water standards, "it really should be across all sites regardless of who the purveyor of that water is."

In addition, pressed by Rep. Ed Case (D-HI) about roadblocks by the Army and Navy over state requests for sampling PFAS at bases in Hawaii, Cramer said DOD, if necessary, will issue guidance to ensure military bases are "transparent" with regulators.

DOD officials at the hearing also revealed that the Air Force expects by mid-April to have sent out approximately 2,500 notifications to landowners of farms telling them they are within one-mile of a location where DOD has detected PFAS in groundwater or linked it to a local water source, per instructions laid out by Congress in the fiscal year 2021 National Defense Authorization Act.

Cramer also pledged to Wasserman Schultz that DOD's PFAS Task Force, established under the Trump DOD in order to take a "proactive stance" on PFAS contamination, would produce an update within 30 days.

Understanding EPA's PBT Rules and Actions Is Vital for Compliance

March 25, 2021

BY: WILEY REIN LLP

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<https://www.jdsupra.com/legalnews/understanding-epa-s-pbt-rules-and-2219030/>

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Under the authority of the Toxic Substances Control Act (TSCA), the U.S. Environmental Protection Agency (EPA) issued its final rules for five persistent, bioaccumulative, and toxic (PBT) chemicals on January 6, 2021. These rules impact the following chemicals: decabromodiphenyl ethers (DecaBDE); phenol, isopropylated, phosphate (3:1) (PIP (3:1)); 2,4,6-Tris(tert-butyl)phenol (2,4,6-TTBP); pentachlorothiophenol (PCTP); and hexachlorobutadiene (HCBD). Each of these rules has certain prohibitions, restrictions, and exclusions.*

We have been reading about what others are saying these final rules permit and prohibit. In light of those interpretations, we strongly recommend that you contact your trusted TSCA counsel to ensure that your understanding of these five rules is consistent with the regulatory text, the preambles establishing those regulations, and EPA's response to public comments. Possessing an incorrect understanding of these rules could result in an EPA enforcement action that carries with it a penalty of \$41,056/day per violation. Taking a little additional time now to understand these actions could save you significant time and resources in the future.

*Earlier this month, EPA also announced a No Action Assurance for PIP (3:1) and a 60-day comment period for all five rules.

Researchers find harmful 'forever chemicals' in pesticide used against mosquitoes in Maryland

March 25, 2021

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<https://www.baltimoresun.com/news/environment/bs-md-pfas-pesticide-maryland-mosquito-control-20210325-db76zvkaaxrc5ripawakzjpefly-story.html>

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Lab tests ordered by environmental groups found harmful chemicals, called PFAS, in a pesticide that Maryland uses for its mosquito control program, the groups said Thursday.

PFAS — per- and poly-fluoroalkyl substances — are known as “forever chemicals” because they don’t break down in nature, and they’re found in all kinds of products, from nonstick cookware to firefighting foams.

“The results for us are extremely disturbing, given the health impacts linked to these forever chemicals,” Ruth Berlin, executive director of the Maryland Pesticide Education Network, said.

Last year, Maryland regulators announced they intended to begin testing drinking water and Chesapeake Bay oysters for PFAS, as a growing number of studies linked the chemicals to liver, kidney and reproductive dysfunction, as well as high cholesterol levels and tumor growth.

I discovered recently that hearing aids could be purchased online. I decided to take the plunge with a hearing aid company and test the idea of hearing aids online for myself.

The recent testing, ordered by the Maryland Pesticide Education Network and Public Employees for Environmental Responsibility, found 3,500 parts per trillion of one type of PFAS and 630 parts per trillion of another in Permanone 30-30, a pesticide sprayed by Maryland’s Department of Agriculture.

The Environmental Protection Agency has set a lifetime health advisory for two types of PFAS in drinking water at 70 parts per trillion, meaning consistent daily exposure at that level isn’t likely to cause adverse effects.

The Maryland Department of Agriculture’s mosquito control program serves 2,100 communities in 16 counties, and spraying typically begins in mid-May in Southern Maryland and the Lower Eastern Shore. In other parts of the state, it begins in late May and early June.

“MDA and private vendors are going to begin their applications in numerous communities in the state,” said Berlin. “The impact of that exposure could affect hundreds of thousands of Marylanders.”

A spokesman for Maryland’s Department of Agriculture said the agency is reviewing the study and will wait for further guidance from the EPA.

“Early findings from the U.S. EPA suggest that PFAS levels found in pesticides are related to plastic containers. All of the Permanone 30[-]30 used by MDA’s Mosquito Control Program is packaged in metal containers,” wrote spokesman Jason Schellhardt in a statement.

A spokesperson for the EPA said the agency received PEER’s research, and “will review it as part of the agency’s ongoing efforts to investigate PFAS contamination in pesticide products.”

“EPA understands the need to provide guidance to states, tribes, and other users as they prepare to purchase mosquito control products for 2021 and will provide more information as it continues its investigation,” read a statement from the agency.

After Public Employees for Environmental Responsibility found PFAS in a different pesticide, called Anvil 10+10, last year, EPA officials said that fluorinated containers used for storage may be to blame. The agency asked states with pesticides stored in the containers to pause their use while it investigates whether they contain or leach PFAS.

But concerned environmental and public health groups worry the chemicals may be discovered in a number of different pesticides, even those that don’t use the same container.

“Our suspicion was that: Maybe it was the barrels in the case of Anvil, but that wasn’t the end of the story,” said Kyla Bennett, PEER’s director of science policy.

Meanwhile, the Maryland Pesticide Education Network became concerned that Permanone could contain PFAS, since it's the same sort of pesticide as Anvil, Berlin said.

Last year, PEER released the results of testing conducted on seafood in St. Mary's County and drinking water in Montgomery County, which found high levels of PFAS. The group tested oysters, crabs and rockfish caught near the Patuxent River Naval Air Station, where the chemicals are believed to have been used in firefighting exercises over many years. That practice will be prohibited in Maryland starting in October. The group also tested drinking water in three homes in Poolesville and Bethesda.

As researchers discover PFAS in a variety of products, consumers ought to educate themselves whenever possible, and purchase products known to be PFAS-free, Bennett said. They should also consider water filtration systems for their homes.

"It's absolutely a game of Whac-A-Mole," she said.

PFAS Paper Mill Lawsuit In Maine Exposes Corporate Susceptibility

March 25, 2021

BY: JOHN GARDELLA

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<https://www.natlawreview.com/article/pfas-paper-mill-lawsuit-maine-exposes-corporate-susceptibility>

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On March 5, 2021, a class action lawsuit was filed in Maine by residents of Fairfield, Maine, in which they allege that a paper mill company polluted residential land with PFAS, thereby devaluing the properties, exposing residents to risks of harm to their health, and necessitating costly remediation of the contaminated land. The PFAS paper mill lawsuit will surely be closely followed by anyone involved in PFAS litigation; however, companies of all types (not just paper companies) must understand that this is but one representative example of the type of lawsuits that we have predicted will have significant impacts on company financials as awareness of PFAS issues continues to grow. These impacts will be felt well beyond industries that use PFAS directly in their manufacturing processes, and companies of any type would must take a closer look at current or legacy PFAS issues that may plague them in the near future.

What Are PFAS and Why Are They a Concern?

Per- and poly-fluoroalkyl substances ("PFAS") are a class of over 7,000 manmade compounds. Chemists at 3M and Dupont developed the initial PFAS chemicals by accident in the 1930s when researching carbon-based chemical reactions. During one such experiment, an unusual coating remained in the testing chamber, which upon further testing was completely resistant to any methods designed to break apart the atoms within the chemical. The material also had the incredible ability to repel oil and water. Dupont later called this substance PFOA (perfluorooctanoic acid), the first PFAS ever invented. After World War II, Dupont commercialized PFOA into the revolutionary product that the company branded "Teflon."

Only a short while later, 3M invented its own PFAS chemical – perfluorooctane sulfonate (PFOS), which they also commercialized and branded "Scotchgard." Within a short period of time, various PFAS chemicals were used in hundreds of products – today, it numbers in the thousands.

The same physical characteristics that make PFAS useful in a plethora of commercial applications, though, also make them highly persistent and mobile in the environment and the human body – hence the nickname, "forever chemicals." While the science is still developing regarding the extent of possible effects on human health, initial research has shown that PFOA and PFOS are capable of causing certain types of cancer, liver and kidney issues, immunological problems, and reproductive and developmental harm.

The PFAS Paper Mill Lawsuit

The Skowhegan paper mill, owned by Sappi and referred to as the Somerset Mill, is a pulping and papermaking facility that manufactures various paper products, including coated paper, grease-proof packaging paper, and bleached

chemical pulp. The paper mill has an annual production of 970,000 metric tons of coated paper and 525,000 metric tons of bleached chemical pulp. The paper mill also consists of a wood mill, where incoming lumber is prepared for the manufacturing process.

The Somerset Mill, like many other paper mills across the globe, produce biosolid waste as a result of cleaning and chemically preparing materials for use in the mill's finished product. The biosolid waste is a sludge material that must be disposed of in some fashion by the mill. Studies have shown that on average, 35% of the material entering pulp and paper mills becomes waste residue. The waste includes a variety of materials, including wastewater sludge, woodyard waste, trash, demolition debris, and ash from boilers. While some of the waste residue can be reused for energy production, the rest must be discarded. Paper mills typically dispose of residue waste by discharging it into the air, water in the form of treated effluent, or into the soil in the form of solid waste or sludge.

In the PFAS paper mill lawsuit, the allegations are that the paper mill obtained licenses from the state of Maine to spread the sludge material on nearby farms, as it also has fertilizing properties that are beneficial to farmers. However, the paper mill is alleged to have known that the PFAS-containing waste that they spread on farms was hazardous, or based on the existing knowledge about PFAS, they should have known of those hazards.

Since 2020, the Maine Department of Environmental Protection has been investigating PFAS contamination in Fairfield, where at least 29 wells have levels exceeding the U.S. Environmental Protection Agency's maximum limit of 70 parts per trillion. According to pleadings in the case, in January 2021, one well measurement for one of the named plaintiffs was 12,910 parts per trillion..

Why This Lawsuit Should Concern Many Businesses

The PFAS paper mill lawsuit is but one example of the type of lawsuit that we predict will overwhelm businesses in the near future, especially when (as we predict) the EPA for the first time sets an enforceable PFAS limit with respect to drinking water. The EPA regulatory action will trigger a requirement that all states follow suit, although each state is still permitted to enact more aggressive standards than the EPA, if they wish.

As states accelerate testing requirements for drinking water sources of all types to determine compliance with the EPA or state-level PFAS limits, enormous amount of data will be collected regarding the scope of PFAS proliferation in the nation's water. This data will allow not only regulatory agencies, but also citizens, such as the ones in Fairfield, Maine, to determine likely sources of PFAS contamination due to businesses in proximity to those water sources. Those companies may become targets of not only regulatory agency action for remediation costs, but also lawsuits from citizens seeking damages for additional remediation costs, property devaluation, and personal injury. Depending on the scope of the PFAS contamination and a company's ultimate contribution to PFAS problems, this could cost some companies millions of dollars.

As the PFAS paper mill lawsuit shows, the lawsuits will not be confined only to chemical manufacturers producing PFAS. Rather, they will extend to companies that utilize the PFAS for their manufacturing process, that purchase raw materials that may be contaminated with PFAS, that utilize water that may be contaminated with PFAS (which would then be discharged by the company), and waste discarded that may contain PFAS. Even companies that merely purchase land that may have legacy PFAS contamination issues may find themselves the target of lawsuits or regulatory action if the PFAS have slowly leached from the soil into water sources over time.

Conclusion

Our prediction remains that in 2021, PFAS drinking water rules will be finalized at the federal level. This will require states to act, as well (and some states may still enact stronger regulations than the EPA). Both the federal and the state level regulations will impact businesses and industries of many kinds, even if their contribution to drinking water contamination issues may seem on the surface to be de minimus. In states that already have PFAS drinking water standards enacted, businesses and property owners have already seen local environmental agencies scrutinize possible sources of PFAS pollution much more closely than ever before, which has resulted in unexpected costs. All companies of all types would be well advised to conduct a complete compliance audit to best understand areas of concern for PFAS liability issues, and ways to mitigate PFAS concerns.

Farm Workers Sue to Block EPA's Antibiotic Pesticide Approval

March 25, 2021

BY: SYLVIA CARIGNAN

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https://news.bloomberglaw.com/environment-and-energy/farm-workers-sue-to-block-epas-antibiotic-pesticide-approval?utm_source=rss&utm_medium=NEVE&utm_campaign=00000178-6ad9-dd1e-a1f9-6effa0f20002
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The EPA approved the use of streptomycin sulfate on citrus crops without first ensuring the pesticide wouldn't cause unreasonable harm to public health or the environment, farm worker advocacy groups said in a petition filed in federal appeals court Thursday.

The Migrant Clinicians Network, Farmworker Association of Florida and others want the U.S. Court of Appeals for the Ninth Circuit to review the Environmental Protection Agency's January registration of streptomycin sulfate. The agency failed to consult with federal agencies responsible for protecting endangered or threatened species and their habitats, the groups said in their petition.

The pesticide is an antibiotic used to control diseases in crops ranging from beans to greenhouse tomatoes to ornamental plants in residential areas, according to the final registration decision.

The EPA found streptomycin to be "practically nontoxic" to honeybees acutely exposed to the substance, but additional data on its effects on pollinators wasn't available when the registration was finalized.

The agency's registration authorized the pesticide's use on a group of citrus crops including grapefruits, limes, and oranges. The change came in response to 2015 applications from Geo Logic Corp. and AgroSource Inc. to allow new uses of streptomycin on the crop group, according to the final registration decision.

Cause of Action: Federal Insecticide, Fungicide, and Rodenticide Act; Endangered Species Act.

Relief: Judicial review; declaration that the EPA's approval of the pesticide violated FIFRA and ESA.

Response: "Because this is pending litigation, EPA has no additional information to share," an agency spokesperson said.

Attorneys: The Center for Biological Diversity, Earthjustice, Center for Public Interest Research, and Natural Resources Defense Council are representing the plaintiffs.

The case is Migrant Clinicians Network v. EPA, 9th Cir., No. 21-70719, 3/25/21.

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EPA awards 2020 ENERGY STAR certification to bakeries

March 25, 2021

BY: TARYN PARKER

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<https://www.bakingbusiness.com/articles/53318-epas-awards-2020-energy-star-certification-to-bakeries>
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WASHINGTON — Bimbo Bakeries USA, Horsham, Pa., Flowers Foods, Thomasville, Ga., and other baking companies were among the 95 manufacturing plants awarded ENERGY STAR certification in 2020 by the United States Environmental Protection Agency (EPA). ENERGY STAR certification designates manufacturing facilities as the most energy efficient in their industries.

“These forward-looking businesses have demonstrated that economic development and job creation go hand-in-hand with environmental progress,” said Michael S. Regan, EPA administrator. “The transition to a clean energy economy is happening now, as partnerships like ENERGY STAR encourage companies to go the extra mile, bringing innovation, cost-savings and pollution reductions in return.”

Overall, these ENERGY STAR plants saved nearly \$400 million on energy bills which is equivalent to the payroll of more than 8,000 US manufacturing jobs. They also avoided the consumption of 80 trillion Btus of energy compared to average plants and prevented more than 5 million metric tons of greenhouse gas emissions which is equal to the energy use of nearly 600,000 homes.

Among the 95 manufacturing plants were several wholesale baking facilities, including Chicago-based Alpha Baking Co.’s facility in Manitowoc, Wis.

“This is an area that we will continue to focus on going forward,” said Lawrence Marcucci, chief executive officer at Alpha Baking Co. “Having said that, 2020 was a tough year. Since we are largely foodservice focused our volume was impacted by the pandemic in 2020. With the reduced volume it was a challenge to stay on track. Many energy uses in the plant are fairly static so maintaining our ENERGY STAR position will be hard.”

The industrial sector emits nearly a third of US total greenhouse gas emissions. Efforts to increase the energy efficiency is crucial for reducing the industrial greenhouse gas emissions necessary.

The ENERGY STAR certification has been around for 15 years. Throughout those years over \$6 billion have been saved on energy bills and prevented more than 65 million metric tons in greenhouse gas emissions compared to average-performing facilities.

Bimbo Bakeries USA had 16 plants awarded, Flowers had 10, TreeHouse Foods Inc. had four, Weston Foods had two, and Mile Hi Companies and Holsum Bakery also achieved the certification.

“Bimbo Bakeries USA is committed to building a sustainable, highly productive and deeply humane company, especially during such trying times as these,” said Chris Wolfe, corporate director, environmental & sustainability at Bimbo Bakeries USA. “We were able to make our operations more efficient by running limited SKUs to ensure shelves were stocked and available to consumers, all while following strict COVID-19 safety protocols to keep our workers and community safe. We are so grateful for frontline associates who make it possible to feed America while staying safe. The ENERGY STAR certifications are honors given to organizations who have consistently made contributions to protecting the environment for several years in a row. We understand that, as the largest commercial bakery in the US, it’s important for us to be a leader in sustainability and we are honored to have multiple facilities receive ENERGY STAR certifications in 2020.”

Plants with a verified energy performance score of 75 (or higher) out of 100 are eligible for the ENERGY STAR certification. This means their plant perform better than 75% of plants within their industry. Energy Star certification can be earned by 20 different manufacturing sectors.

EPA recognizes Chester County among nation's leading Green Power users

March 25, 2021

https://www.dailylocal.com/news/local/epa-recognizes-chester-county-among-nations-leading-green-power-users/article_3576275c-8d9c-11eb-80ae-2b093cde9cab.html

WEST CHESTER—The Chester County Commissioners announced today the County's acceptance by the U.S. Environmental Protection Agency (EPA) as a Green Power Partner.

In its confirmation of the County of Chester as a Green Power Partner, the EPA noted the County's purchase of 20,460,000 kilowatt-hours (kWh) of green power annually, which is enough green power to meet 100 percent of the County's own electricity use.

"By choosing green power, Chester County is helping advance the voluntary market for green power and development of those sources," noted the EPA in its confirmation.

"Being recognized as a Green Power Partner by the U.S. Environmental Protection Agency is a great honor," said Chester County Commissioners' Chair Marian Moskowitz. "Using green power helps us to reduce air pollution and lower our emissions footprint, and this acknowledgment will, we hope, encourage other local governments, businesses and organizations in the region to do the same."

By moving the needle in the voluntary green power market, Chester County government and other Green Power Partners are helping to reduce the negative health impacts of air emissions, including those related to ozone, fine particles, acid rain, and regional haze.

Chester County Commissioner Josh Maxwell said, "One of the first actions we took as a new Board of Commissioners last year was to appoint members to the County's Environmental and Energy Advisory Board. Soon after that we signed a renewable electric supply purchase agreement to offset 100% of our electricity supply.

"Actions such as this have helped us to achieve the Green Power Partnership with the EPA."

Earlier this month, Chester County presented the first draft of its Climate Action Plan which provides a current greenhouse gas emissions inventory, and sets out actions for reducing emissions and improving energy efficiency throughout the county. The Climate Action Plan establishes a blueprint for how the county, municipalities, businesses and other stakeholders can reduce their carbon footprint, and it expands on the County's original 2010 Greenhouse Gas Reduction Report.

"Our Climate Action Plan will help guide us and all of our communities in Chester County as we work together to reduce our carbon footprint," said Chester County Commissioner Michelle Kichline. "But we know that we must lead by example, which is why the environmental and energy actions that we have taken and will continue to take, and the confirmation that we have received by the EPA as a Green Power Partner, are so important."

U.S. EPA blocks Virgin Islands refinery expansion pending environmental justice review

March 25, 2021

BY: VALERIE VOLCOVICI

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<https://leaderpost.com/pmn/business-pmn/u-s-epa-blocks-virgin-islands-refinery-expansion-pending-environmental-justice-review>

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WASHINGTON — The U.S. Environmental Protection Agency on Thursday said it has revoked an expansion permit for the Limetree Bay oil refinery in the U.S. Virgin Islands, citing concerns that the area around the facility is overburdened with pollution.

The decision allows the plant to keep operating but will block ongoing expansion work pending an EPA review to assess measures the facility needs to take to protect nearby residents.

"Withdrawing this permit will allow EPA to reassess what measures are required at the Limetree facility to safeguard the health of local communities in the Virgin Islands, while providing regulatory certainty to the company," said EPA acting Regional Administrator Walter Mugdan.

Limetree was not immediately available for comment.

The move marks the first big decision by President Joe Biden's EPA to withdraw a permit for a large industrial facility over considerations of environmental justice, which Biden has said would be a big priority for his administration.

The 200,000 barrel per day facility on St. Croix had restarted this year after a decade idle after securing a Clean Air Act "plantwide applicability limit" permit from the Trump administration on Dec. 2, 2020. The permit had allowed it to build additional units without being deemed a new source of pollution, which triggers more stringent pollution controls.

The owner of the refinery, Limetree Bay Ventures, backed by private equity firms EIG and Arclight Capital, challenged requests by the EPA to increase air quality monitoring. The company argued the monitors are not necessary and that it should not have to pay the costs to operate them.

Some local residents told Reuters recently <https://www.reuters.com/article/us-usa-caribbean-refinery-environment-in-idUSKBN2B00DA> that since the refinery restarted earlier this year, they have had difficulty breathing along with headaches and watery eyes. (Reporting by Valerie Volcovici; additional reporting by Laura Sanicola; Editing by David Gregorio)

Regan's broad science integrity review targets Pebble Mine

March 25, 2021

<https://insideepa.com/daily-feed/ewire-regan-s-broad-science-integrity-review-targets-pebble-mine>

- EPA Administrator Michael Regan's project to identify past agency actions that broke its science integrity policy will cover a wide range of programs and research with a new report noting it has already identified the Clean Water Act (CWA) assessment of impacts from the controversial Pebble Mine project as one such potential violation.

A March 24 New York Times article cites one person involved in the process saying the Pebble Mine study is already on a "list of decisions where staff say scientific integrity was violated," and that the source expects the review to identify "about 90" actions by the Trump administration by the time it concludes.

Stakeholders and Democratic lawmakers **have already urged Regan** to issue a CWA "veto" of the Alaska mining project, which opponents say poses an existential threat to salmon fisheries in the nearby Bristol Bay.

The Army Corps of Engineers rejected a permit application for Pebble last year, saying it was contrary to public interest, but some critics maintain EPA's CWA veto is needed to ensure that decision stands.

A finding that political appointees interfered in the scientific assessment of possible harms from the mine -- research that happened largely under the Obama administration but whose use was contested throughout the Trump era -- could aid those calls.

Regan announced the project **through an email to staff** earlier this week, writing that he has directed EPA Science Advisor Jennifer Orme-Zavaleta -- who also serves as the acting assistant administrator for the Office of Research and Development -- and Scientific Integrity Official Francesca Grifo to lead a three-pronged review of agency science policies, practices and advisory panels.

He also urged staff to "bring any items of concern to the attention" of either Grifo or a deputy scientific integrity official. The memo also does not specify what steps EPA will take after identifying violations, but the agency has already set a precedent for withdrawing actions it deems the result of "political interference" by **scrapping a controversial toxicity assessment** for the chemical perfluorobutanesulfonic acid (PFBS).

And acting chemicals chief Michal Freedhoff has identified two other chemical decisions as the product of integrity violations, namely the 2018 registration of the herbicide dicamba and a Toxic Substance Control Act (TSCA) evaluation of the solvent trichloroethylene (TCE), though she has not publicly stated how her office will proceed on either.

But Trump-era officials and other Republicans are likely to defend their work, setting off new political and policy battles over whatever steps Regan and his team take next. The *Times* quotes former EPA Chief of Staff Mandy Gunasekara as

saying, "Every decision we made in the Trump administration was rooted in science and was based on both advice and concurrence with the career scientific team. . . . Not all of them agreed, but that's with any team."

The *Times* notes that the Pebble assessment is unlikely to be the only high-profile action caught in Regan's integrity review, noting that the list of violations "currently includes well-known controversies" other than the mine, "as well as rulings around relatively obscure toxic chemicals."

Cohasset awarded \$182,500 grant to protect water

March 25, 2021

BY: QUINN KELLY

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<https://www.wickedlocal.com/story/cohasset-mariner/2021/03/25/cohasset-awarded-182-500-grant-protect-drinking-water-contaminants/6997960002/>

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On the heels of the announcement that the town would be proposing a water rate increase at May's Town Meeting, Cohasset has learned it will be receiving a state grant to combat water contamination.

The grant comes in the amount of \$182,500 and will be earmarked to support efforts to address elevated levels of PFAS in drinking water.

PFAS compounds are a family of chemicals widely used since the 1950s to manufacture common consumer products. The compounds are also contained in some legacy fire-fighting foams.

Drinking water may become contaminated if PFAS deposited onto the soil seeps into groundwater or surface water. PFAS has been linked to a variety of health risks, particularly in women who are pregnant or nursing, and in infants.

Cohasset was only recently informed of their need to contend with the pollutant, an expense that Water Commission Chair Leonara Jenkins said was "unplanned."

"We sat at a round table with DEP (Department of Environmental Protection) and were told about this new pollutant that has arrived on the scene," Jenkins explained. "This is something that was kind of dropped on us. This is not something that would be normal maintenance."

Ridding the town's water supply of PFAS will require a new granular activated carbon (GAC) filtration system.

Town Finance Director Don Piatt explained that this will be no small cost for the town.

"The GAC filtration system project [has a] \$3.6 million price tag," said Piatt. "That alone is almost \$280,000 per year over 20 years. In addition to that, the ongoing maintenance of that system is about \$300,000 a year."

Before worrying about what the state may add in terms of requirements in dealing with PFAS, Cohasset will already have added nearly \$600,000 per year to its bottom line expenses.

"We don't know what regulations are really coming down yet because DEP and EPA are still haggling over whatever, and we are kind of at their mercy," Jenkins added. "So we have to make sure that we have enough income to meet whatever requirements they tell us."

The grant should help offset some of the costs of those regulations, which have recently begun coming down from the state.

The new drinking water standard for PFAS is 20 ppt (parts per thousand) for the sum of six PFAS compounds, called "PFAS6." The rule requires public water suppliers to test for PFAS6 and act when there is a detection above the limit. In using the sum of six PFAS compounds, these standards provide a higher degree of protection, particularly for sensitive subgroups including pregnant women, nursing mothers and infants. There are currently no federal PFAS standards for drinking water.

All community public water systems are required to test for PFAS6. Large public water supplies, those serving a population of 50,000 or more, were required to begin their initial PFAS6 tests as of January 1, 2021. Public water supplies serving populations between 10,000 and 50,000 will begin initial tests April 1, 2021, and those serving a population of less than 10,000 will begin testing October 1, 2021.

Local officials including Senator Patrick O'Connor (R-Weymouth) and Representative Joan Meschino (D-Hull) expressed enthusiasm for the potential help the funding will bring for Cohasset.

"Municipalities across the Commonwealth need this funding to adequately protect their drinking water from harmful contaminants and ensure the health of their residents," said Senator Patrick O'Connor (R-Weymouth). "I'm looking forward to seeing Cohasset's project progress and I appreciate the support the Administration has given to this effort."

"Contamination of public drinking water is of utmost importance to both environmental and public health," said Representative Meschino (D-Hull). "This funding is a crucial first step to cleaning, and ultimately maintaining, healthy, drinkable water for all present and future Cohasset residents."

"Maintaining a high-quality drinking water supply is one of the most important things we can do for our residents," said Cohasset Town Manager Christopher Senior. "This grant will help Cohasset proactively ensure the Town's water system meets all state requirements."

The award was a part of a funding round that saw \$3 million in grants given to 17 public water supply systems for expenses related to the design and planning of treatment systems that protect drinking water against PFAS.

EPA urged to reconsider listing Missouri lakes as 'impaired'

March 25, 2021

BY: JIM SALTER

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<https://apnews.com/article/blaine-luetkemeyer-lakes-environment-missouri-tigers-mens-basketball-vicky-hartzler-d758ab564ea3fe6324f6a899183ddf0a>

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O'FALLON, Mo. (AP) — The eight Republican members of Missouri's congressional delegation are urging the Environmental Protection Agency to reconsider listing 40 of the state's waterways as "impaired," a list that includes the Lake of the Ozarks and Truman Reservoir.

A letter from Reps. Blaine Luetkemeyer and Vicky Hartzler and signed by the other GOP delegation members was sent this week to Edward H. Chu, acting administrator for the EPA's Region 7, Luetkemeyer's office said Thursday. The letter said the impaired designations "would have significant impacts on families, landowners, small businesses," and on the state's economy.

"Not only was this listing misinformed, but it could potentially cost our communities \$1.7 billion in local revenue at a time when our economy is still recovering and small businesses are working to get back on their feet," Luetkemeyer said in a news release.

The EPA announced the listing of the 40 lakes and reservoirs in November, while under the administration of President Donald Trump. The change in administrations has not impacted the list.

The EPA cited high levels of chlorophyll-a in each waterway. Chlorophyll-a is a measure of the amount of algae growing in the water, according to the EPA's website. Though a natural part of freshwater, too much algae can cause green water, odor and can result in decreased levels of dissolved oxygen.

Those decreased oxygen levels can impact the health of aquatic life. The EPA cited fish kills at Lake of the Ozarks, Truman Reservoir and Jackrabbit Lake in Jackson County. But the congressional letter said some of the fish kills were not verified by the Missouri Department of Natural Resources or the Missouri Department of Conservation.

Missouri DNR Director Carol Comer also wrote to EPA, on March 16, and asked for more time to gather new data and evaluate existing data. Comer wrote that it would be “premature” to list the lakes as impaired.

“The consequences of listing are serious, and therefore impairment determinations require a level of confidence we have not yet reached for these lakes,” Comer wrote.

Some lakes were placed on the list based on older data “that have a low probability of being representative of current conditions,” Luetkemeyer and Hartzler wrote. The letter also notes that while EPA criteria indicate that points of compliance examined should be near the dam or outflow of each lake or reservoir, many were not.

EPA spokesman Curtis Carey said in an email that the agency received more than 80 comments concerning its plan to add the lakes and reservoirs to the impaired list. “After considering the comments received, EPA may make revisions, as appropriate, and will transmit the EPA’s final decision to Missouri,” he said.

Carey did not offer a timetable on when the final decision will be made.

U.S. Environmental Protection Agency and Beverly, Ohio, Ferroalloy Production Plant Enter into Consent Agreement

March 25, 2021

<https://www.jdsupra.com/legalnews/wastewater-enforcement-u-s-7382904/>

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The United States Environmental Protection Agency (“EPA”) and Globe Metallurgical, Inc. (“GMI”), entered into a December 20th Consent Agreement and Final Order (“CAFO”) addressing alleged violations of a Clean Water Act National Pollution Discharge Elimination System (“NPDES”) permit. See Docket No. CAA-05-2021-0004.

The CAFO provides that GMI operates a Beverly, Ohio, ferroalloy production plant (“Plant”).

GMI is also stated to own and/or operate a landfill located adjacent to the Plant.

The Plant is stated to have received from the Ohio Environmental Protection Agency an NPDES permit. Such permit is stated to have only authorized the discharge of pollutants from certain designated outfalls. Those outfalls are designated Outfalls 001, 002 and 601.

The CAFO alleges the following violations:

- Unlawful Discharge of Pollutants through Outfall 001
- Unlawful Discharge of Pollutants through Outfall 002
- Unlawful Discharge of Pollutants through Outfall 601

A civil penalty of \$55,300 is assessed.

A copy of the CAFO can be downloaded [here](#).

DEP reaches consent agreement with Chesapeake Energy

March 25, 2021

BY: [PAUL J. GOUGH](#)

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<https://www.bizjournals.com/pittsburgh/news/2021/03/25/chesapeake-energy-consent-agreement.html>

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The Pennsylvania Department of Environmental Protection and the U.S. Environmental Protection Agency have reached a proposed consent agreement and a potential \$1.9 million fine for Chesapeake Appalachia over alleged violations of the Clean Water Act and the Pennsylvania's Clean Streams Law.

In a lawsuit filed Wednesday in the U.S. District Court for Middle Pennsylvania, EPA and DEP charged that Chesapeake Appalachia was responsible for unauthorized dredge and fill into 76 separate sites in Pennsylvania. The alleged incidents "resulted in the unauthorized discharge of dredged and/or filled material into waters of the United States and/or caused and created unauthorized water obstructions, encroachments and pollution in, along, across or projecting into the waters of the Commonwealth."

The sites were in Beaver County as well as Bradford, Sullivan, Susquehanna and Wyoming counties. The complaint said the discharges in question affected 2,326 linear feet of streams and 25.7 acres of wetlands, with nine of the sites representing about half of the acreage.

A consent decree with Chesapeake Energy filed this week included a \$1.9 million fine with half going to federal authorities and the other half going to the Pennsylvania DEP. Pennsylvania's funding will go half to the Dams and Encroachments Fund and the other half to the Oil and Gas Fund.

Chesapeake will also repair damage to wetlands, according to the consent decree.

Chesapeake released a brief statement: "Having voluntarily disclosed these issues with the DEP and EPA seven years ago, we are pleased to resolve this legacy matter." Chesapeake (NYSE: CHK) told the EPA and DEP in 2014 that it had identified sites with unauthorized discharges.

The two sites are the CTG BEA and Kerry BEA pads in Beaver County.
